

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

Julian Flores aka Julian Flores Sanchez,

Plaintiff,

v.

Wells Fargo Bank, N.A.,

Defendant.

No. 2:21-cv-00006-RSL

**AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, Julian Flores aka Julian Flores Sanchez, by and through counsel and brings this action for damages caused by Defendant Wells Fargo's mishandling of payments made in Plaintiff's Chapter 13 bankruptcy plans which constitutes breach of contract, violations of 11 U.S.C. 524 (i), the Washington Consumer Protection Act, RCW 19.86, *et seq.*, and tort laws, and states the following allegations:

**I. JURISDICTION AND VENUE**

1. Defendant's conduct violates the bankruptcy discharge injunction in direct violation of 11 U.S.C. 524(i).

2. Defendant's conduct also violates the Washington Consumer Protection Act, RCW 19.86, *et seq.*, and tort laws.

3. Based on the below factual allegations, this Court has diversity jurisdiction pursuant to 28 U.S. Code § 1332 because every party in this lawsuit is a citizen of a different state, and the amount in dispute exceeds \$75,000.



1           11. As a result of the economic crisis, Mr. Flores defaulted on his mortgage loans  
2 for the subject property as well as three other real properties he owned. Defendant Wells  
3 Fargo claims to be owning or holding the Loan.

4           12. As a result of needing reorganization, Plaintiff filed for Chapter 13 bankruptcy  
5 protection on September 11, 2011, in the Western District of Washington Bankruptcy Court,  
6 under case 11-20512. The bankruptcy schedules list all three real properties: the Property,  
7 another located at 30414 1st Place South, Federal Way, WA 98003 (which he co-owned  
8 with two relatives), and a third property located at 1410 South 282nd Pl, Federal Way, WA  
9 98003 (which he co-owned with one relative).

10           13. Plaintiff's Confirmed Bankruptcy Plan provided Plaintiff with specific relief,  
11 allowing him to surrender the property located at 1410 S 282nd Place; to surrender 30414  
12 1st Place South and be released from the indebtedness of \$44,000 which was the second  
13 mortgage on the property. Most importantly, Plaintiff would have been able to cure any  
14 arrears and reinstate the Loan on the Property as his homestead. *See* Exhibit B.

15           14. Over the course of the Chapter 13 bankruptcy, Plaintiff made 75 timely  
16 mortgage payments to Wells Fargo through the Chapter 13 Trustee totaling \$140,150. The  
17 bankruptcy never completed, and it was ultimately dismissed on December 1, 2017 and  
18 closed on March 7, 2018 purportedly because the plan extended beyond 60 months without  
19 completion. Thus, Plaintiff and his co-borrowers had to sell the 30414 1st Avenue South  
20 Property at a loss and pay the \$44,000 indebtedness in full.

21           15. During the pendency of the bankruptcy case, the Chapter 13 Trustee filed a  
22 "Notice of Final Cure Payment" on May 10, 2017, obligating Wells Fargo to confirm  
23 whether it considered the underlying default have been cured. *See* Exhibit C. On May 31,  
24 2017, Wells Fargo advised in writing that Plaintiff had cured the pre-petition mortgage  
25 default through the bankruptcy plan payments.

26           16. However, Wells Fargo claimed that Plaintiff owed eight *post-petition*  
27 mortgage payments, or \$15,663.12 for the period October 15, 2016 through May 15, 2017

1 despite the fact Plaintiff timely tendered all monies owed under his confirmed bankruptcy  
2 plan which included all post-petition mortgage payments, and the account was in fact  
3 current. *See* the Bankruptcy Docket notation on May 31, 2017, Exhibit D.

4 17. Wells Fargo qualified its Response to the Notice of Final Cure by stating that  
5 the following: “\*Wells Fargo is in the process of reconciling the account and will amend the  
6 response to Notice of Final Cure if necessary.”

7 18. Wells Fargo subsequently filed an amended proof of claim on July 14, 2017,  
8 relating back to the 2011 account history but it failed to provide any meaningful reason for  
9 the amendment and aside confirming that the payment monthly payment included an escrow  
10 amount of \$181.08 and a change in the arrearage from \$4,631.77 to \$4,204.31. Additionally,  
11 Wells Fargo never amended their Response to the Notice of Cure.

12 19. Wells Fargo never reconciled the account until the debtor complained through  
13 his Notices of Error and Requests for Information and even then, Wells Fargo took more  
14 than two years to complete the reconciliation after the bankruptcy was dismissed.

15 20. As a result of Wells Fargo’s failure to accurately record and report all payments  
16 made by the Plaintiff, failure to complete its reconciliation of his account, or notify the  
17 borrower that a reconciliation was unnecessary, Mr. Flores was not on notice that there that  
18 there was anything he could do to mitigate his damages so that he could obtain a discharge.

19 21. The failure to obtain a discharge resulted in the forgoing losses, as well as the  
20 repossession of two vehicles that Plaintiff used for work, leaving him with a deficiency of  
21 \$13,025.08, for which he remains liable to this day. *See* Exhibit E.

22 22. Based on Wells Fargo’s calculation, Plaintiff had to pay the alleged arrears on  
23 the Loan in the amount of \$15,663.12. As a result of Wells Fargo’s misapplication of  
24 Plaintiff’s payment and therefore miscalculation of the amount due and owing on his  
25 mortgage loan, Plaintiff was denied the financial fresh start he so desperately needed and  
26 was entitled to obtain and thereafter his issues with his mortgage loan only continued.  
27

23. Because English is Plaintiff's second language, he never understood of any of Wells Fargo's communications which were sent to him and had extreme difficulty obtaining help to communicate with Wells Fargo about the Loan. Plaintiff finally retained the undersigned, a bilingual lawyer, and on or about January 12, 2018, counsel notified Wells Fargo that it now represented Plaintiff, requesting for all further communications be directed to Barraza Law, PLLC.

24. Around this period of time, Wells Fargo had determined the Loan to be seriously delinquent and in reliance on their communications regarding his mortgage loan delinquency, the Plaintiff retained a Spanish speaking attorney to assist him in filing a loan modification application to save his home from foreclosure.

25. In February 22, 2018, in response to an Wells Fargo acknowledged receipt of Plaintiff's written "inquiry," and responding that he can expect a reply by March 7, 2018.

26. On March 6, 2018, Wells Fargo acknowledged receipt of Plaintiff's inquiry extending the response date to March 20, 2018.

27. On March 12, 2018, Wells Fargo inexplicably sent correspondence to borrower's bankruptcy counsel, instead of Barraza Law, announcing, **"we are not moving forward with a review of the mortgage for assistance. We based our decision on a review of the mortgage history, the recent information you provided us, and the current circumstances surrounding the mortgage."** Wells Fargo did not explain what it meant by "the current circumstances surrounding the mortgage."

28. The denial letter did not acknowledge Wells Fargo's continued failure to reconcile his mortgage loan as promised in the filed Response to Final Cure in Plaintiff's bankruptcy case, and case and made no effort to explain how a borrower who made 75 on-time monthly payments to the Chapter 13 Trustee in his bankruptcy case, who in turn paid all known post-petition mortgage payments and obligations, and pre-petition arrears in accord with his confirmed chapter 13 conduit plan.

1           29. Despite these timely payments and continued monthly payments after his  
2 bankruptcy dismissed, Plaintiff did not even qualify for a “review” of his loan modification  
3 application.

4           30. On March 19, 2018, Wells Fargo again acknowledged Plaintiff’s original  
5 inquiry and extended the response date to April 2, 2018.

6           31. On March 27, 2018, Wells Fargo acknowledged receipt of inquiry from  
7 Plaintiff’s attorney, and reiterated that it would not consider a payment assistance review  
8 because it determined that there had not been a “large enough change since your last review  
9 to consider a new review.” There was never any “last review” made by Wells Fargo of  
10 Plaintiff’s request for mortgage assistance. *See* Exhibit F.

11           32. On March 29, 2018, Wells Fargo served Mr. Flores with a statutory Notice of  
12 Pre-Foreclosure Options. That same day, it also informed him that approximately \$222.72  
13 of his payment had been placed in “unapplied account funds.”

14           33. The Notice of Pre-Foreclosure Options caused Plaintiff to panic. He was angry,  
15 confused, and feeling despair that he would end up losing his house even though Wells  
16 Fargo was the one that screwed up his mortgage account entirely. During this time, Plaintiff  
17 never stopped making payments toward the Loan.

18           34. Wells Fargo notified Plaintiff that the Loan was accelerated as of April 2, 2018.

19           35. April 3, 2018, Wells Fargo rejected a mortgage payment made earlier by the  
20 Plaintiff.

21           36. On April 8, 2018, Wells Fargo notified the Plaintiff directly, with full  
22 knowledge that he is represented by counsel, and informed him of a delinquent amount of  
23 \$13,424.60 as of April 2, 2018.

24           37. On April 12, 2018, Plaintiff, through his counsel, served Wells Fargo with a  
25 statutory Request for Information (“RFI”), pursuant to the Real Estate Procedure Act, asking  
26 Wells Fargo to explain the basis for the delinquency given the fact that payments were made  
27 timely and completely through the bankruptcy plan. Wells Fargo acknowledged the RFI by

1 letter dated April 16, 2018 and informed Plaintiff that a response to his inquiry would be  
2 provided by April 30, 2018.

3 38. On April 18, 2018, Plaintiff paid the amount demanded by Wells Fargo to  
4 reinstate the loan in order to save his home from foreclosure.

5 39. On April 19, 2018, Plaintiff, through his counsel, served Wells Fargo with a  
6 statutory notice of error (“NOE”) informing the bank specifically of seven separate errors it  
7 made, including (1) communicating with a represented borrower; (2) erroneously returning  
8 \$12,953.72 to the bankruptcy trustee in Plaintiff’s bankruptcy case on or around February  
9 5, 2016; (3) failing to file an amended response to Notice of Final Cure after account  
10 reconciliation in Plaintiff’s bankruptcy case; (4) failing to process Plaintiff’s 2018 loan  
11 modification application; (5) failing to apply an extra overpayment of \$233.23 to principal  
12 for the December 2017 payment; (6) failing to correctly apply payments from Plaintiff’s  
13 bankruptcy trustee; and (7) filing an erroneous or incomplete Response to Final Cure with  
14 the bankruptcy court.

15 40. On April 30, 2018, Wells Fargo informed Plaintiff it would respond to his  
16 “inquiry” without specifying whether it meant the RFI, the NOE, or any other inquiry made  
17 by him previously, by May 9, 2018.

18 41. On May 4, 2018, Wells Fargo informed Plaintiff that he could contact Justin  
19 Hill, a Home Preservation Specialist to assist him navigate the “mortgage assistance  
20 process.” Wells Fargo’s gesture proved meaningless in that Plaintiff had to pay the amount  
21 demanded by the bank to stave off the foreclosure.

22 42. On May 9, 2018, Wells Fargo informed Plaintiff it would now respond to his  
23 “inquiry” by May 23, 2018.

24 43. On May 17, 2018, Wells Fargo sent Plaintiff a letter with the subject line  
25 reading, “[u]pdate to the *inquiries* received about Julian Flores, account number  
26 \*\*\*\*\*0083” (emphasis added). The letter stated that Wells Fargo has “initiated a new  
27 review for possible payment options.”

1           44.     On May 23, 2018, Wells Fargo sent Plaintiff a letter informing him it would  
2 respond to his “inquiries” by June 7, 2018.

3           45.     On June 7, 2018 Wells Fargo sent Plaintiff a letter informing him it would  
4 respond to his “inquiries” by June 21, 2018.

5           46.     On June 15, 2018, Wells Fargo sent Plaintiff a check for \$1,732.79, as an  
6 “escrow refund” without any further explanations. Having been burned by which Plaintiff  
7 returned to Wells Fargo.

8           47.     On June 21, 2018, Wells Fargo sent Plaintiff a letter informing him it would  
9 respond to his “inquiries” by July 6, 2018.

10          48.     On July 6, 2018, Wells Fargo sent Plaintiff a letter informing him it would  
11 respond to his “inquiries” by July 20, 2018.

12          49.     On July 20, 2018, Wells Fargo sent Plaintiff a letter informing him it would  
13 respond to his “inquiries” by August 3, 2018.

14          50.     On August 3, 2018, Wells Fargo sent Plaintiff a letter informing him it would  
15 respond to his “inquiries” by August 17, 2018.

16          51.     On August 17, 2018, Wells Fargo sent Plaintiff a letter informing him it would  
17 respond to his “inquiries” by August 31, 2018.

18          52.     On August 31, 2018, Wells Fargo sent Plaintiff a letter informing him it would  
19 respond to his “inquiries” by September 17, 2018.

20          53.     On September 17, 2018, Wells Fargo sent Plaintiff a letter informing him it  
21 would respond to his “inquiries” by October 1, 2018.

22          54.     On October 1, 2018, Wells Fargo sent Plaintiff a letter informing him it would  
23 respond to his “inquiries” by October 16, 2018.

24          55.     On October 16, 2018, Wells Fargo sent Plaintiff a letter informing him it would  
25 respond to his “inquiries” by October 30, 2018.

26          56.     On October 17, 2018, Wells Fargo demanded for Plaintiff’s counsel to verify  
27 if legal representation is still ongoing.



1           57.     On October 30, 2018 Wells Fargo sent Plaintiff a letter informing him it would  
2 respond to his “inquiries” by November 14, 2018.

3           58.     On November 14, 2018 Wells Fargo sent Plaintiff a letter informing him it  
4 would respond to his “inquiries” by November 29, 2018.

5           59.     On November 29, 2018 Wells Fargo sent Plaintiff a letter informing him it  
6 would respond to his “inquiries” by December 13, 2018.

7           60.     On December 13, 2018 Wells Fargo sent Plaintiff a letter informing him it  
8 would respond to his “inquiries” by December 28, 2018.

9           61.     On December 28, 2018 Wells Fargo sent Plaintiff a letter informing him it  
10 would respond to his “inquiries” by January 11, 2019.

11          62.     On January 11, 2019 Wells Fargo sent Plaintiff a letter informing him it would  
12 respond to his “inquiries” by January 28, 2019.

13          63.     On January 28, 2019 Wells Fargo sent Plaintiff a letter informing him it would  
14 respond to his “inquiries” by February 11, 2019.

15          64.     On February 6, 2019, Wells Fargo demanded for Plaintiff’s counsel to verify  
16 whether legal representation is still ongoing.

17          65.     On February 11, 2019 Wells Fargo sent Plaintiff a letter informing him it would  
18 respond to his “inquiries” by February 26, 2019.

19          66.     On February 22, 2019, Wells Fargo sent Plaintiff “a check in the amount of  
20 \$13,195.11 per customer refund request.” The check, number 7035529973 was dated  
21 February 21, 2019 in the amount of \$13,195.11 and labeled “for misapplication reversal.”  
22 Plaintiff in fact had not made any request for refund, but simply for Wells Fargo to fully  
23 account for all payments he had made toward the Loan.

24          67.     On February 26, 2019 Wells Fargo sent Plaintiff a letter informing him it would  
25 respond to his “inquiries” by March 12, 2019.

26          68.     On March 5, 2019, Wells Fargo sent a letter to Plaintiff entitled “Resolution to  
27 the inquiry we received from Julian Flores...” This particular correspondence admitted, for

1 the first time, that “[d]uring the bankruptcy there was a delay in the posting of payments.”  
2 Wells Fargo stated further, “[s]ince recognizing this situation we have updated our system  
3 and ensured that the payments we have received match the terms of the bankruptcy plan.  
4 We apologize that our customer had to spend time addressing the matter.” Since the  
5 bankruptcy did blow up and it had been in the rear-view mirror for more than two years, by  
6 this time, Wells Fargo’s concession rang hollow.

7 69. Wells Fargo’s March 5, 2019 correspondence further admitted, “[d]ue to the  
8 delay in the payment posting, Julian Flores received corrected 1098 tax forms for 2013 and  
9 2014. We understand that this may require changes to the tax returns that were previously  
10 filed.” Wells Fargo’s March 5, 2019 correspondence further indicated, “[o]n October 1,  
11 2015, we moved Mr. Flores’ account from Wachovia to Wells Fargo Home Mortgage’s  
12 servicing system.” Mr. Flores has or will incur fees and charges to hire a tax professional to  
13 analyze any tax implications of Wells Fargo’s accounting failures and to prepare amended  
14 returns.

15 70. Although Wells Fargo never explained fully what had happened, it appears that  
16 it was laboring under excess funds in Plaintiff’s escrow account in the amount of  
17 \$12,953.72, Wells Fargo sent the bankruptcy trustee the escrow refund check, dated  
18 December 21, 2015, number 7029747026 in the amount of \$12,953.73. The bankruptcy  
19 trustee’s ledger/records reflect the check was received on February 5, 2016. *See Exhibit G.*

20 71. Wells Fargo’s March 5, 2019 correspondence also stated, “[a]fter further  
21 review, a business decision was made to remediate funds in the amount of \$13,195.11.  
22 Check number 7035529973 in the amount of \$13,195.11 was sent payable to Julian Flores  
23 and sent via overnight FedEx tracking number 785645881083. Thank you for your patience  
24 *while we researched the account.*”

25 72. On or about April 7, 2019, Plaintiff’s counsel sent a letter to Wells Fargo  
26 informing Wells Fargo that Plaintiff intended to commence litigation against Wells Fargo  
27

1 because its actions deprived Mr. Flores of his bankruptcy discharge and damaged his  
2 financial status.

3 73. On April 11, 2019, Wells Fargo responded that it received the inquiry and  
4 would respond by April 25, 2019.

5 74. On April 25, 2019, Wells Fargo informed Plaintiff it would respond to his April  
6 7, 2019 inquiry by May 9, 2019.

7 75. On May 9, 2019, Wells Fargo informed Plaintiff that it would respond to his  
8 April 7, 2019 inquiry by May 23, 2019.

9 76. On May 23, 2019, Wells Fargo informed Plaintiff that it would respond to his  
10 April 7, 2019 inquiry by June 7, 2019.

11 77. On June 7, 2019, Wells Fargo informed Plaintiff that it would respond to his  
12 April 7, 2019 inquiry by June 14, 2019.

13 78. On June 11, 2019, Wells Fargo sent Plaintiff another escrow refund check in  
14 the amount of \$1,968.37.

15 79. On June 14, 2019, Wells Fargo confirmed that Plaintiff could cash the  
16 \$13,195.11 check without waiving his claims against Wells Fargo. On June 17, 2019,  
17 Plaintiff's counsel deposited the \$13,195.11 check into the firm's trust account on behalf of  
18 the Plaintiff.

19 80. Based on his own accounting and being prompted by Wells Fargo's admissions  
20 of error, Plaintiff hired nationally renowned mortgage expert Bernard Jay Patterson to  
21 research his mortgage account. Mr. Patterson found that Wells Fargo misapplied Plaintiff's  
22 post-petition payments to the escrow account which caused an overage in the escrow  
23 balance, and a deficiency in the mortgage account that otherwise would not have existed.  
24 Moreover, Mr. Patterson determined that Wells Fargo conducted numerous escrow analyses  
25 based upon its own misapplications and in the process, thereby causing additional errors,  
26 and allowing the alleged "default" to grow continuously. Most importantly, Wells Fargo's  
27

1 determination of the overpayment amount of \$12,953.72 which it sent to the Chapter 13  
2 Trustee, was incorrect.

3 81. Mr. Patterson found if Wells Fargo had correctly applied payments during the  
4 five-years of bankruptcy, the account would not have been delinquent at all. In fact, Wells  
5 Fargo's failure to properly apply Plaintiff's payments in a correct and timely manner caused  
6 interest to accrue uncontrollably thereby hugely inflating the amount of the Loan over the  
7 course of several years.

8 82. What Wells Fargo has done to Plaintiff is not an isolated incident but a part of  
9 Wells Fargo's well-documented pattern of mishandling of payments made by debtors in  
10 chapter 13 cases. Evidence of this pattern is found in the Settlement between Wells Fargo  
11 and the U.S. Trustee's Office, *In re Ernestine C.J. Green*, U.S. Bankruptcy Court for the  
12 District of Maryland case number 11-33377-TJC. There, Wells Fargo identified thousands  
13 of accounts being affected with "systemic issues" relating to the program it used to analyze  
14 escrow accounts. In the same Settlement Agreement, Wells Fargo committed to taking  
15 certain actions to remedy such "systemic issues."<sup>2</sup>

16 83. By its own admission in its March 5, 2019 correspondence, Wells Fargo's  
17 systems failed to ensure the timely posting of the mortgage payments fundamental to the  
18 success of Mr. Flores's Chapter 13 Plan and to prevent ongoing defaults that led to initiation  
19 of foreclosure proceedings that were only stopped due to Flores' efforts at mitigation by  
20 paying the reinstatement amount Wells Fargo requested.

21 84. The time that it has taken the Plaintiff to straighten things out with Wells Fargo  
22 went on for more than two years, during which time Wells Fargo promised to review  
23 Plaintiff's complaint and provide redress in 30 separate occasions. Being under a financial  
24 strain was not enough to break up the Plaintiff's marriage, but his inability to rein in the  
25 mortgage loan caused his wife to ultimately divorce him was a factor in the implosion of his  
26 marriage. She He began to doubt Plaintiff's explanations that he was being stalled by Wells  
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<sup>2</sup> [https://www.justice.gov/ust/file/wells\\_fargo\\_settlements.pdf/download](https://www.justice.gov/ust/file/wells_fargo_settlements.pdf/download)

1 Fargo in his quest for information about the mortgage loan. Plaintiff lost the trust that his  
2 loved ones placed on him as the provider and protector of the family.

3 85. Plaintiff has endured not only the financial hardship caused by Wells Fargo's  
4 conduct, but also an enormous emotional strain on himself and his marriage. Plaintiff, whose  
5 native tongue is Spanish, has found it extremely difficult to explain to others his  
6 circumstances in order to obtain assistance. He has felt extremely guilty toward his then-  
7 wife, and other family members, that he could not resolve the issues of the mortgage loan,  
8 that he failed to secure a discharge for bankruptcy and that he has remained in the same  
9 financial quagmire years after he started the process of filing for bankruptcy.

10 86. At all times relevant, Wells Fargo continued to report Plaintiff's mortgage  
11 account as late or delinquent to the credit bureaus.

12 87. As a result of what he has experienced with Wells Fargo, Plaintiff has  
13 experienced extreme emotional distress, including anxiety and depression which manifested  
14 itself into various physical conditions including recurring pain in his head, back and  
15 stomach. Plaintiff experienced loss of sleep, loss of appetite, irritability, and a tendency to  
16 retreat, rather than to enjoy interaction with others. He has felt enormous anger alongside  
17 with despair based on the number of times that Wells Fargo told him that it will address his  
18 concerns, only to also be told that the Loan was being escalated and his home may be lost  
19 to foreclosure. Plaintiff has felt that no one understood or cared about his plight and despite  
20 his best effort to pay his debts and to regain his financial footings, he has failed.

#### 21 **IV. CAUSES OF ACTION**

##### 22 **A. CLAIM ONE: BREACH OF CONTRACT**

23 88. Plaintiff repeats, realleges and incorporate by reference to the foregoing  
24 paragraphs.

25 89. Plaintiff Flores is subject to the terms of the loan contract order confirming the  
26 Plaintiff's Chapter 13 Plan.  
27

1           90. While Plaintiff timely made all payments as required under the promissory  
2 note, the deed of trust either on his own or through payments the chapter 13 trustee made on  
3 his behalf.

4           91. Despite his payments, Wells Fargo breached the agreements by failing to  
5 properly credit the payments he made under the chapter 13 Plan as required by the loan  
6 documents and court order. Specifically, paragraph 3 of the Deed of Trust requires Wells  
7 Fargo to apply each payment made by the Plaintiff in a specific order, first to prepayment  
8 charges, to last, to pay late charges due under the Secured Notes. *See* Exhibit A.

9           92. Although Wells Fargo promised to reconcile the account, it only did so after  
10 the debtor hired counsel to investigate the alleged arrears. It was not until March 4, 2019, at  
11 the earliest, that that Wells Fargo finally provided a reconciliation of his loan and Flores  
12 learned that it did not properly apply all payments made by the Plaintiff as per the terms of  
13 the Promissory Note and Deed of Trust.

14           93. Despite Wells Fargo's acknowledgment, Wells Fargo failed to articulate its  
15 servicing activities, errors, and purported corrections in any sort of comprehensible  
16 language. Utterly confused by Wells Fargo's accounting disaster, Plaintiff hired an expert  
17 accounting professional, Jay Patterson, to wade through a stack of accounting documents to  
18 understand the cascade of errors that caused his bankruptcy to founder and provoked his  
19 post-bankruptcy delinquency that was only resolved after he paid tens of thousands of  
20 dollars to cure and investigate a Wells Fargo-caused default.

21           94. Moreover, Wells Fargo conducted numerous escrow analyses based upon its  
22 own misapplications and in the process, caused additional errors. Most importantly, Wells  
23 Fargo incorrectly arrived at the overpayment of \$12,953.72 which it sent to the Chapter 13  
24 Trustee, then determined that the payments made by Plaintiff were inadequate.

25           95. In addition to failure to apply Plaintiff's payments to the right account, Wells  
26 Fargo also diverted payments made by Plaintiff to its own "unapplied funds account" while  
27

1 taxing Plaintiff for accrued interest, late fees and penalties, and expenses relating to default  
2 and foreclosure.

3 96. The court's Order of Confirmation issued within the Chapter 13 Plan is  
4 effectively a new contract between the debtor and his creditor. The terms of the Order is an  
5 agreed-upon contract between the parties and a judicial order. While Plaintiff had the  
6 obligation to make all payments as required under the bankruptcy court's order, Well Fargo  
7 had the concomitant obligation to apply these payments in an accurate and timely manner  
8 to lessen the amount Plaintiff owes on the Loan, which it failed to do.

9 97. Plaintiff was not aware until at least March 5, 2019, and arguably only later,  
10 upon his expert's completion of his investigation of the March 5, 2019 correspondence, the  
11 true nature and scope of Wells Fargo's nearly continuous breaches of contract.

12 98. Wells Fargo's breach of the loan agreement and the bankruptcy court order  
13 caused Plaintiff's Plan to blow up and denied the benefit of reorganization. Wells Fargo's  
14 breach caused Plaintiff to lose both of his commercial vehicles and remain liable for the  
15 deficiency of \$13,025.08. Wells Fargo's breach caused the Plaintiff's to be delinquent in the  
16 amount of \$15,663.12 and to incur additional interests on the amount of the due and owing  
17 on the loan on a rolling basis. But for Wells Fargo's breach of contract, Plaintiff would not  
18 have to pay for an attorney and a mortgage loan expert to determine the status of his loan.  
19 Plaintiff has suffered loss of time and the aggregate of Plaintiff's ongoing losses caused by  
20 Wells Fargo's breach of contract is well in excess of \$100,000.00.

21 **B. CLAIM TWO: BREACH OF GOOD FAITH AND FAIR DEALING**

22 99. Plaintiff incorporates herein by reference as though fully set forth at length  
23 each and every preceding allegation and statement contained herein, inclusive, of the factual  
24 allegations.

25 100. Wells Fargo breached the implied duty of good faith and fair dealing present  
26 in all contracts when it failed to complete a thorough reconciliation and review of the  
27 Plaintiff's loan account when it should have known they had made serious errors when they

showed a substantial delinquency that did not align with the chapter 13 Trustee's accounting of payments made to Wells Fargo on the Plaintiff's behalf. At the end of the Plaintiff's bankruptcy case, instead of doing a thorough review and reconciliation of the account as they claimed they would do in the Response to Notice of Final Cure, they just continued to claim the Plaintiff was delinquent on his mortgage loan by failing to properly apply payments the Plaintiff made in accordance with his note and deed of trust both during the bankruptcy and in the years thereafter.

101. Wells Fargo had no reason not to perform, since it was obvious from a review of the history of payments since the filing of the Plaintiff's bankruptcy in 2011 that there was no reason why his loan would be delinquent and that any delinquency was due to an error on the part of Wells Fargo.

102. Wells Fargo's refusal to accept payments was therefore in bad faith.

103. After further review, it appears that no error actually existed in the loan modification and the revocation appears to be nothing more than an attempt to void the modification agreement by abusing the contractual language that allowed for the correction of errors. Plaintiff was not aware until at least March 5, 2019, and arguably much later, upon his expert's completion of his investigation of the March 5, 2019 correspondence, the true nature and scope of Wells Fargo's nearly continuous misrepresentations.

104. Plaintiff is entitled to compensatory damages as a result of Wells Fargo's conduct, including but not limited to general damages, expectation, and consequential damages.

### **C. CLAIM THREE: VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT**

105. Plaintiff incorporates herein by reference as though fully set forth at length each and every preceding allegation and statement contained herein, inclusive, of the Factual Allegations.



1           106. Wells Fargo engaged in unfair and deceptive acts and practices in violation of  
2 the Washington Consumer Protection Act, Wash. Rev. Code 19.86.020, including but not  
3 limited to:

- 4           a. Mis-applying Plaintiff's payments for years, and wrongly paying an escrow  
5 refund to the chapter 13 trustee that then was unavailable to cure the arrearage  
6 on the loan.
- 7           b. Engaging in conduct that would mislead an average loan borrower.
- 8           c. Sending an escrow refund to the chapter 13 trustee, and then sending a  
9 Response to the Notice of Final Cure payment that demanded cure of the  
10 shortage that was directly caused by Wells Fargo's error, thereby causing the  
11 dismissal of the Plaintiff's chapter 13 case.
- 12           d. Failing to put Mr. Flores on notice of its various activities servicing his account  
13 in a language he could understand. Section 4.2 of the Making Home Affordable  
14 Program Handbook for Servicers of Non-GSE Mortgages states that mortgage  
15 servicers "must ensure that its staff is able to effectively communicate with all  
16 borrowers, including borrowers with limited English proficiency." While Mr.  
17 Flores admits that he received the various notices that Wells Fargo mailed to  
18 him throughout his bankruptcy, he asserts that Wells Fargo knew or should  
19 have known that English is not his first language and providing him notices or  
20 correspondence in English was not reasonably calculated to apprise him of  
21 account events.

22           107. Defendants' deceptive acts or practices occurred in its trade or business and  
23 are capable of deceiving a substantial portion of the public. Given the terms of settlement  
24 agreement between Wells Fargo and the U.S. bankruptcy trustee in the State of Maryland,  
25 it is undeniable that the bank's conduct not only has the capacity to deceive but has in fact  
26 deceived a substantial portion of the public.

27

1           108. Additionally, Defendants were in a superior informational position in that the  
2 Plaintiff cannot be reasonably expected to know the accounting of their own mortgage loan  
3 – Wells Fargo alone possessed the information necessary to calculate the proper balance.

4           109. As such, Defendants' general course of conduct as alleged herein is injurious  
5 to the public interest, and the acts complained of herein are ongoing and/or have a substantial  
6 likelihood of being repeated.

7           110. As a direct and proximate result of Defendants' unfair acts or practices,  
8 Plaintiff suffered injury.

9           111. The injury that resulted from Wells Fargo's conduct include loss of  
10 opportunity, encompassing the opportunity to receive a discharge from the bankruptcy court.

11           112. Wells Fargo's violation of the CPA caused Plaintiff to lose not one, but both  
12 of his commercial vehicles, and suffer a deficiency for which he is still liable.

13           113. Plaintiff was not aware until at least March 5, 2019, and arguably much later  
14 upon his expert's completion of his investigation of the March 5, 2019 correspondence, the  
15 true nature and scope of Wells Fargo's nearly continuous acts of deception and unfairness.

16           114. Wells Fargo caused an arrears in his account in the amount of \$15,663.12, and  
17 thousands more in interests which continue to accrue on the faulty balance Wells Fargo  
18 claims Plaintiff owes.

19           115. Wells Fargo's conduct caused Plaintiff to suffer the consequences flowing  
20 from the Loan being improperly deemed delinquent, which include but not limited to  
21 accrued interests, late fees and penalties and expenses relating to in default and foreclosure.

22           116. Wells Fargo's conduct caused Plaintiff to lose valuable time that he could use  
23 to earn an income as well as resources he has spent to get to the bottom of his mortgage  
24 account.

25           117. Plaintiff has incurred fees paid to attorneys and experts who assisted him in  
26 analyzing what Wells Fargo has done.  
27

1           118. Wells Fargo's conduct also caused Plaintiff's credit rating to be diminished,  
2 marking it much more expensive, if not impossible for him to obtain credit.

3           119. The Plaintiff's Property, in particular, has been tainted by Wells Fargo's  
4 transmission and recording of foreclosure documents.

5           120. Plaintiff is therefore entitled to an order enjoining the conduct complained of  
6 herein; actual damages; treble damages pursuant to Wash. Rev. Code 19.86.090; costs of  
7 suit, including a reasonable attorney's fee; and such further relief as the Court may deem  
8 proper.

9           121. Plaintiff is entitled to exemplary damages because Defendant acted in bad faith  
10 in deliberate or reckless disregard of his rights and their obligation to hold Plaintiff's escrow  
11 funds in trust. The actions of Defendants as alleged herein constitute violations of the  
12 Washington Consumer Protection Act, and: (1) have occurred in trade or commerce; (2) are  
13 deceptive as alleged above; (3) negatively affect the public, including thousands of  
14 Washington residents who have loans with Wells Fargo in a chapter 13 bankruptcy; and (4)  
15 causing injuries to Plaintiff as alleged above.

16           **D. CLAIM FOUR: NEGLIGENT MISREPRESENTATION**

17           122. Plaintiff repeats and realleges and incorporate by reference the foregoing  
18 paragraphs.

19           123. The tort of negligent misrepresentation occurs when the defendant, in the  
20 course of business, profession, employment, or a transaction in which the defendant has a  
21 pecuniary interest, negligently supplies false information for the guidance of others in their  
22 business transactions, and the plaintiff justifiably relies on such information to his detriment.

23           124. Under the circumstances alleged, Wells Fargo owed Plaintiff a duty to provide  
24 him with accurate information regarding the amount he owed on his loan, loan modification  
25 process and to comply with their obligations to reconcile his account in accord with the  
26 representations made by Defendant in the Response to Notice of Cure.

1           125. Wells Fargo committed negligent misrepresentation against Plaintiff because  
2 it is in the business of mortgage lending and loan servicing, upon whom the consumers look  
3 to for information about their mortgage account and to make sufficient payments to keep  
4 their home and ultimately own it free and clear of any encumbrances. Wells Fargo's  
5 compensation for lending and servicing mortgage loans comes directly from payments made  
6 by the consumers towards their loans. Yet, Wells Fargo negligently supplied false or  
7 incorrect information to the bankruptcy trustee as well as to the Plaintiff, intending for these  
8 parties to rely upon the information it provides, including promising to reconcile the account  
9 and timely post trustee-tendered payments.

10           126. Plaintiff was not aware until at least March 5, 2019, and arguably only later,  
11 upon his expert's completion of his investigation of the March 5, 2019 correspondence, the  
12 true nature and scope of Wells Fargo's nearly continuous misrepresentations.

13           127. Wells Fargo knew or should have known that Plaintiff made every payment  
14 that was due in a timely manner and the account was never delinquent during the five years  
15 of the Chapter 13 bankruptcy and beyond. Yet, it incorrectly applied Plaintiff's payment to  
16 the escrow account, deemed the mortgage account to be delinquent, and wrongfully  
17 computed interest and other fees based on this unilateral and artificial delinquency. Wells  
18 Fargo was negligent in its misapplication and miscalculation of the balance due and owing  
19 every month, as well as the principal balance, and its failure to respond to the Plaintiff's  
20 repeated inquiry to correct its errors. Plaintiff had no option but to rely upon Wells Fargo's  
21 acts and omissions as there was no other entity or person that he could turn to. It was also  
22 foreseeable to Wells Fargo that the errors would destroy not only the Chapter 13 bankruptcy  
23 case, but also affect the mortgage loan status adversely. It was foreseeable to Wells Fargo  
24 that left uncorrected, the errors made by Wells Fargo would cause monetary and other  
25 damages to the Plaintiff, including the permanent loss of his homestead.

26           128. Supplying such obviously false information demonstrates a lack of exercise of  
27 reasonable care or competence in communicating with Plaintiff.

1           129. Plaintiff justifiably relied on Wells Fargo's misrepresentations, falsely  
2 believing that his bankruptcy dismissal and lack of a proper loan modification review were  
3 based proper even though he had not understanding how he could be delinquent when he  
4 had made every payment.

5           130. The injury that resulted from Wells Fargo's negligent misrepresentation  
6 include loss of opportunity, encompassing the opportunity to receive a discharge from the  
7 bankruptcy court. Wells Fargo's violation of the CPA caused Plaintiff to lose not one, but  
8 both of his commercial vehicles, and suffer a deficiency for which he is still liable. Wells  
9 Fargo caused an arrears in his account in the amount of \$15,663.12, and thousands more in  
10 interests which continue to accrue on the faulty balance Wells Fargo claims Plaintiff owes.  
11 Wells Fargo's negligent misrepresentation caused Plaintiff to suffer the consequences  
12 flowing from the Loan being improperly deemed delinquent, which include but not limited  
13 to accrued interests, late fees and penalties and expenses relating to in default and  
14 foreclosure. Wells Fargo's negligent misrepresentation caused Plaintiff to lose valuable time  
15 that he could use to earn an income as well as resources he has spent to get to the bottom of  
16 his mortgage account. Plaintiff has incurred fees paid to attorneys and experts who assisted  
17 him in analyzing what Wells Fargo has done. Wells Fargo's conduct also caused Plaintiff's  
18 credit rating to be diminished, marking it much more expensive, if not impossible for him  
19 to obtain credit. The Property has been tainted by Wells Fargo's transmission and recording  
20 of foreclosure documents.

21                                   **E. CLAIM FIVE: NEGLIGENCE**

22           131. Plaintiffs repeat and reallege and incorporate by reference to the foregoing  
23 paragraphs.

24           132. At common law, every individual owes a duty of reasonable care to refrain  
25 from causing foreseeable harm in his interactions with others. Wells Fargo owes Plaintiff a  
26 duty of care not to mishandle the payments he made pursuant to the Confirmed Chapter 13  
27 Bankruptcy Plan, which it admitted to breaching. Furthermore, Wells Fargo has a duty to

1 promptly respond to Plaintiff's inquiries concerning the status of his payments and the status  
2 of his mortgage loan, and to correct any errors made. By avoiding Plaintiff's inquiry, and  
3 delaying the correction of its own accounting mistakes, Wells Fargo breached its duty of  
4 care toward Plaintiff. It was foreseeable to Wells Fargo that not only its accounting errors  
5 would harm Plaintiff, its delay in investigating and correcting the errors have further  
6 exacerbated the harm suffered by the Plaintiff.

7 133. Plaintiff was not aware until at least March 5, 2019, and arguably only much  
8 later, upon his expert's completion of his investigation of the March 5, 2019  
9 correspondence, the true nature and scope of Wells Fargo's nearly continuous negligence.

10 134. But for Wells Fargo's negligence, Plaintiff's Chapter 13 Plan would not have  
11 blown up and denied him the benefit of reorganization. The injury that resulted from Wells  
12 Fargo's conduct include loss of opportunity, encompassing the opportunity to receive a  
13 discharge from the bankruptcy court. Wells Fargo's negligence caused Plaintiff to lose not  
14 one, but both of his commercial vehicles, and suffer a deficiency for which he is still liable.  
15 Wells Fargo caused an arrears in his account in the amount of \$15,663.12, and thousands  
16 more in interests which continue to accrue on the faulty balance Wells Fargo claims Plaintiff  
17 owes. Wells Fargo's negligence caused Plaintiff to suffer the consequences flowing from  
18 the Loan being improperly deemed delinquent, which include but not limited to accrued  
19 interests, late fees and penalties and expenses relating to in default and foreclosure. Wells  
20 Fargo's negligence caused Plaintiff to lose valuable time that he could use to earn an income  
21 as well as resources he has spent to get to the bottom of his mortgage account. Plaintiff has  
22 incurred fees paid to attorneys and experts who assisted him in analyzing what Wells Fargo  
23 has done. Wells Fargo's conduct also caused Plaintiff's credit rating to be diminished,  
24 making it much more expensive, if not impossible for him to obtain credit. The Property, in  
25 particular, has been tainted by Wells Fargo's transmission and recording of foreclosure  
26 documents.

**F. CLAIM SIX: CONVERSION**

135. Plaintiffs repeat and reallege and incorporate by reference to the foregoing paragraphs.

136. Conversion is the unjustified, willful interference with a chattel which deprives a person entitled thereto the right of possession. Wrongful intent is not an element of conversion, and good faith is not a defense. Therefore, neither good nor bad faith, neither care nor negligence, neither knowledge nor ignorance, are the gist of the action in conversion. Money is a proper subject of conversion so long as it is capable of being identified. In this case, Wells Fargo admitted to taking Plaintiff's identifiable payments and misapplying them to the escrow account. But Wells Fargo also took some of Plaintiff's payments and did not apply them at all. One example of identified funds that was converted by Wells Fargo is on March 29, 2018, Wells Fargo served Plaintiff Flores with a statutory Notice of Pre-Foreclosure Options, as well as informing him of \$222.72 being held in an "unapplied account." Wells Fargo's conversion of Plaintiff's monies was improper and gave rise to liability for which Plaintiff can recover fully.

137. Plaintiff was not aware until at least March 5, 2019, and arguably only later, upon his expert's completion of his investigation of the March 5, 2019 correspondence, the true nature and scope of Wells Fargo's conversion.

138. As a result of Wells Fargo's conversion of Plaintiff's monies, Plaintiff's Chapter 13 Plan blew up, he was denied the benefit of reorganization, and he faced the real potential of losing his home thereafter when Wells Fargo continued their actions. The injury that resulted from Wells Fargo's conversion include loss of opportunity, encompassing the opportunity to receive a discharge from the bankruptcy court. Wells Fargo's conversion caused Plaintiff to lose not one, but both of his commercial vehicles, and suffer a deficiency for which he is still liable. Wells Fargo caused an arrears in his account in the amount of \$15,663.12, and thousands more in interests which continue to accrue on the faulty balance Wells Fargo claims Plaintiff owes. Wells Fargo's conversion caused Plaintiff to suffer the

consequences flowing from the Loan being improperly deemed delinquent, which include but not limited to accrued interests, late fees and penalties and expenses relating to in default and foreclosure. Wells Fargo's conversion caused Plaintiff to lose valuable time that he could use to earn an income as well as resources he has spent to get to the bottom of his mortgage account. Plaintiff has incurred fees paid to attorneys and experts who assisted him in analyzing what Wells Fargo has done. Wells Fargo's conduct also caused Plaintiff's credit rating to be diminished, marking it much more expensive, if not impossible for him to obtain credit. The Property, in particular, has been tainted by Wells Fargo's transmission and recording of foreclosure documents.

#### **G. CLAIM SEVEN: TORT OF OUTRAGE**

139. Plaintiffs repeat and reallege and incorporate by reference to the foregoing paragraphs.

140. To constitute outrage, the complained-of conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. The tort of outrage does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.

141. Wells Fargo's mishandling of Plaintiff's payments, which occurred after he made all payments under the Confirmed Plan, caused his bankruptcy case to blow up. He lost one of his vehicles which was necessary for him to work as much as before the loss of the vehicle. Wells Fargo refused to consider him for a loss mitigation plan by misleadingly blaming his poor payment history that Wells Fargo caused. Nearly thirty times over the course of two years, Wells Fargo kept telling Plaintiff that it would respond to his inquiries while declaring the Loan to be in default and threatening him with foreclosure. Plaintiff did take Wells Fargo at its word and waited in earnest for resolution each time the bank made him a promise. By contrast, Wells Fargo did not bother investigating into the concerns raised, but unilaterally and arbitrarily dealt with Plaintiff's payments; making refunds of



1 payments while declaring the account delinquent, failing to apply payments but to park  
2 Plaintiff's monies into an "unapplied account" allowing for interest to accrue unchecked  
3 while derailing his bankruptcy and thereafter continuing to send out threats of foreclosure.

4 142. Wells Fargo's conduct, in its totality, is a type of financial terrorism which  
5 went beyond all possible bounds of decency as to be utterly intolerable in a civilized  
6 community. Wells Fargo in fact knew about the "systemic problem" inherent in its software  
7 program used to analyze escrow accounts in 2013 and agreed to provide remedies to  
8 thousands affected borrowers in 2015. Yet, it allowed for the systemic problem to continue  
9 affecting Plaintiff's loan while promising to complete a reconciliation that it finally  
10 completed nearly two years after it promised to do so in its response to the notice of cure  
11 and only after it was forced to do. Even then, the Plaintiff and his counsel were completely  
12 confused by Wells Fargo's unintelligible response, forcing the Plaintiff to spend over  
13 \$10,000 to figure out the source and scope of the financial wreckage.

14 143. In this district, the Court has held that the servicer committed the tort of outrage  
15 when it "adopted a strained and unprincipled analysis of the deed of trust to justify the  
16 imposition of enormous charges directly onto the borrower's mortgage statements, and the  
17 servicer reasonably should have known that the charges would have caused immense  
18 emotional distress." *Lucero v. Cenlar FSB*, 2016 U.S. Dist. LEXIS 10430 (W.D. Wash.  
19 Jan28, 2016).

20 144. Here, Wells Fargo knew of the problem inherent in its system relating to  
21 escrow analysis and application of mortgage payments of thousands of borrowers and  
22 promised to clean up its act. Yet, Wells Fargo allowed the problem to infect Plaintiff's loan,  
23 then falsely represented that Plaintiff's loan was in default, and threatened foreclosure of his  
24 property.

25 145. The Plaintiff did not discover Wells Fargo's errors with his loan account until  
26 March 5, 2019 at the earliest, as their errors were concealed from him.  
27

1           146. When Plaintiff hired an attorney to assist him to inquire about the status of his  
2 loan, Wells Fargo delayed, delayed, and delayed, causing Plaintiff to incur a multitude of  
3 damages ranging from being denied the bankruptcy discharge, losing one of his work  
4 vehicles and being liable for the deficiency from their repossession, incurring interest on an  
5 inflated loan amount as well as fees and costs relating to the default, investigate the  
6 accounting virus Wells Fargo let loose on his mortgage account, amend his taxes, and defend  
7 himself from foreclosure.

8           147. One can imagine the enormous frustration that Plaintiff was experiencing while  
9 trying to obtain information from Wells Fargo for more than two years, but that would only  
10 be one source of suffering. Plaintiff also experienced anger, anxiety, shame, and anguish.  
11 Wells Fargo did not just throw Plaintiff's bankruptcy case into chaos, it also helped to end  
12 his marriage. One only has to look at the sheer number of promises made by Wells Fargo,  
13 during the years of 2018 and 2019, that it would respond to Plaintiff's inquiries, and the  
14 contradiction caused by Wells Fargo's actions of determining the account to be in default,  
15 inflating the amount due and owing on the account, and taking steps to foreclosure, to feel  
16 the strongest feeling of outrage and extreme repugnancy. As observed by the *Lucero* court:  
17 "Regardless of whether [the bank] was demanding immediate payment or was simply  
18 threatening to collect them in the future, the message was clear: continue this litigation and  
19 we will take your home. Such conduct is beyond the bounds of decency and is utter  
20 intolerable." Here, Wells Fargo never had the intent to correct its own errors. Wells Fargo  
21 was simply placating Plaintiff, albeit in the most transparent manner, while using the delay  
22 to accelerate the Loan and to work up the foreclosure. Wells Fargo's conduct was beyond  
23 the bounds of decency and utterly intolerable by the community we live in.

24           148. Plaintiff suffered and continue to suffer from severe emotional distress as a  
25 result of Defendant's conduct.  
26  
27

1           149. Plaintiff's distress is manifested in feelings of fear, depression, anger and  
2           helplessness, which has led him to suffer from anxiety, sleeplessness, and embarrassment  
3           among other symptomologies.

4           150. Plaintiff is entitled to compensation due to the poor treatment received from  
5           Defendant and their reckless and/or intentional infliction of emotional distress upon him.

6           **H. CLAIM EIGHT: VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT**

7           151. Plaintiff incorporates herein by reference as though fully set forth at length  
8           each and every preceding allegation and statement contained herein, inclusive, of the Factual  
9           Allegations.

10          152. Plaintiff alleges that Wells Fargo violated the Equal Credit Opportunity Act  
11          (ECOA), 15 U.S.C. §§ 1691–1691f (2006).

12          153. ECOA makes it “unlawful for any creditor to discriminate against any  
13          applicant, with respect to any aspect of a credit transaction ... on the basis of race, color,  
14          religion, national origin, sex or marital status, or age.” 15 U.S.C. § 1691(a)(1). One way  
15          that the ECOA effectuates this goal is through its notice requirement which states:” Each  
16          applicant against whom adverse action is taken shall be entitled to a statement of reasons  
17          for such action from the creditor.” Schlegel v. Wells Fargo Bank, N.A., 720 F.3d 1204, 1210  
18          (9th Cir. 2013)

19          154. Plaintiff contends that Defendants’ denial of his request to be considered for a  
20          loan modification is a “revocation of credit” for purposes of the definition of “adverse  
21          action.” 15 U.S.C. § 1691(d)(6).

22          155. Plaintiff applied for credit, a loan modification, in order to fix Wells Fargo’s  
23          error in application of payments. The Plaintiff was current on his payments to Wells Fargo  
24          at the time. The Plaintiff was thus an “applicant” as defined under the ECOA. 15 U.S.C. §  
25          § 1691a (b) and § 1691(a)(d).

26          156. Plaintiff applied for credit, a loan modification with Defendants. See Schlegel  
27          v. Wells Fargo Bank, NA, 720 F.3d 1204, 1210 (9th Cir.2013).

1           157. Plaintiff's application was summarily denied on March 27, 2018, when Wells  
2           Fargo sent a letter to the Plaintiff's attorney explaining that it would not consider the  
3           Plaintiff for a modification due to there not being a large enough change since the "last  
4           review" that Wells Fargo did – but there was no "last review", so the reason given for the  
5           denial was false on its face.

6           158. Plaintiff alleges that Defendants violated the ECOA when they failed to follow  
7           the procedural requirements that creditors must follow in notifying any applicant when  
8           action is taken on their credit application.

9           159. Defendants' March 27, 2018 letter denying Plaintiff's request for a  
10          modification failed to give the Plaintiff any reasons for its adverse action 15 U.S.C.  
11          § 1691(d)(2).

12          160. The Plaintiff was current at the time of the March 27, 2018 denial. 15 U.S.C.  
13          § 1691(d)(6).

14          161. Wells Fargo failed to provide a reason for the adverse action and/or to give  
15          notification of the Plaintiff's rights to request reasons for the notification and the person or  
16          office where such a statement could be obtained. 15 U.S.C. § 1691(d)(2)(A) and (B).

17          162. Wells Fargo revokes credit when they annul, repeal, rescind or cancel a right  
18          to defer payment of a debt.

19          163. Wells Fargo annulled, repealed, rescinded, or canceled the Plaintiff's right to  
20          defer payment of a debt or repayment of their loan.

21          164. Plaintiff was not aware until at least March 5, 2019, and arguably only later,  
22          upon his expert's completion of his investigation of the March 5, 2019 correspondence, that  
23          Wells Fargo misrepresented its refusal to consider him for a loan modification because it  
24          hid its error – the true cause of the refusal to consider him for a modification - until March  
25          5, 2019.

26          165. Failure to give the ECOA notice gives Plaintiff a private right of action to sue  
27          for the violation of ECOA. 15 U.S.C. § 1691e ("Any creditor who fails to comply with any

1 requirement imposed under this subchapter shall be liable to the aggrieved applicant for any  
2 actual damages sustained by such applicant”).

3 166. The Plaintiff is entitled to actual damages, attorney’s fees and costs, punitive  
4 damages in the amount of \$10,000 and any other equitable relief the court may deem  
5 necessary for violations of the ECOA. 15 U.S.C. § 1691e(a) –(d).

6 **I. CLAIM NINE: VIOLATION OF THE REAL ESTATE SETTLEMENT**  
7 **PROCEDURES ACT (VIOLATION OF 12 USC 2605(e))**

8 167. Plaintiff incorporates herein by reference s though fully set forth at length each  
9 and every preceding allegation and statement.

10 168. 12 U.S.C. § 2605(e)(1)(A), states:

11 “[i]f any servicer of a federally related mortgage loan receives a qualified  
12 written request from the borrower (or an agent of the borrower) *for*  
13 *information relating to the servicing of such loan*, the servicer shall  
14 provide a written response acknowledging receipt of the correspondence  
within 20 days (excluding legal public holidays, Saturdays, and Sundays)  
unless the action requested is taken within such period.” 12 U.S.C. § 2605  
(e)(1)(A)(emphasis added).

15 169. 12 U.S.C. § 2605(e)(1)(B) defines a qualified written request as:

16 “[A] written correspondence, other than notice on a payment coupon or  
17 other payment medium supplied by the servicer, that (i) includes, or  
18 otherwise enables the servicer to identify, the name and account of the  
19 borrower; and (ii) includes a statement of the reasons for the belief of the  
borrower, to the extent applicable, that the account is in error or provides  
sufficient detail to the servicer regarding other information sought by the  
borrower.” 12 U.S.C. § 2605(e)(1)(B).

20 170. The statute also requires that once a qualified written request has been made,  
21 the creditor has 60 days to provide the borrower with either:

22 “a written explanation or clarification that includes--

23 (B)(i) to the extent applicable, a statement of the reasons for which the  
servicer believes the account of the borrower is correct as determined by  
the servicer; and

24 (ii) the name and telephone number of an individual employed by, or the  
office or department of, the servicer who can provide assistance to  
the borrower ; or

25 (C)(i) information requested by the borrower or an explanation of why the  
26 information requested is unavailable or cannot be obtained by the servicer;  
27 and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.”

12 U.S.C. § 2605 (e)(2)(B)—(C)

171. Under 12 USC § 2605(k)(1)(E), servicers shall not “fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter.”

172. At all relevant times, Wells was, and continues to be, a “servicer” under 12 C.F.R. § 1024.2(b).

173. At all relevant times, Wells Fargo was, and continues to be, a “servicer” under 12 C.F.R. § 1024.2(b).

174. At all relevant times, Plaintiff’s loan was, and continues to be, a “mortgage loan” under 12 C.F.R. § 1024.31.

175. 12 CFR § 1024.35(e)(1)(i) states:

In general, a servicer must respond to a notice of error by either:

(A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or

(B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.

(ii) Different or additional error. If during a reasonable investigation of a notice of error, a servicer concludes that errors occurred other than, or in addition to, the error or errors alleged by the borrower, the servicer shall correct all such additional errors and provide the borrower with a written notification that describes the errors the servicer identified, the action taken to correct the errors, the effective date of the correction, and contact information, including a telephone number, for further assistance.

176. Wells Fargo failed to conduct a reasonable investigation of the Plaintiff’s notices of error. *Wilson v. Bank of Am.*, 48 F. Supp. 3d 787, 804 (E.D. Pa. 2014) (“The addition of the word ‘reasonable’ seemingly imposes a substantive obligation that is not

1 satisfied by the mere procedural completion of some investigation followed by a written  
2 statement of reasons.”).

3 177. Wells Fargo’s responses to the notices of error were untimely and opaque,  
4 including the March 5, 2019 communication which was so unintelligible as to be no  
5 response at all. *Wilson v. Bank of Am.*, 48 F. Supp. 3d 787 (E.D. Pa. 2014) (plaintiff  
6 sufficiently alleged that servicer did not conduct a reasonable investigation of her notices of  
7 error where the servicer sent her responses with contradictory explanations for why she was  
8 not given a permanent loan modification

9 178. 12 CFR § 1024.36(d)(1) requires:

10 (1) Investigation and response requirements. Except as provided in  
11 paragraphs (e) and (f) of this section, a servicer must respond to an  
information request by either:

12 (i) Providing the borrower with the requested information and contact  
information, including a telephone number, for further assistance in  
writing; or

13 (ii) Conducting a reasonable search for the requested information and  
14 providing the borrower with a written notification that states that  
15 the servicer has determined that the requested information is not available  
16 to the servicer, provides the basis for the servicer's determination, and  
provides contact information, including a telephone number, for further  
assistance. 12 CFR § 1024.36(d)(1).

17 179. Wells Fargo failed to conduct a reasonable investigation of the Plaintiff’s  
18 information requests and its communications related thereto were untimely and  
19 unreasonable, including the March 5, 2019 communication which was so unintelligible as  
20 to be no response at all.

21 180. Under 12 C.F.R. § 1024.41, the implementing regulations of the Real Estate  
22 Settlement Procedures Act (“RESPA”), if the servicer denies this application for any trial or  
23 permanent loan modification option available to the borrower, it shall state in the notice sent  
24 to the borrower “the specific reason or reasons for the servicer’s determination for each such  
25 trial or permanent loan modification option.” 12 C.F.R. § 1024.41(d).

181. Wells violated 12 C.F.R. § 1024.41(c)(1)(i) by not evaluating Plaintiff for a HAMP or HAMP-like modification, even though this program was required to be a part of Wells Fargo's loss mitigation and was described as an alternative.

182. In the alternative, if Wells did evaluate Plaintiffs for a HAMP modification, or a similar loss mitigation program, Wells violated 12 C.F.R. § 1024.41(d) by not providing Plaintiff with the specific reasons for its determination not to offer him a HAMP modification or a HAMP-like modification.

## V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant Wells Fargo for the following:

1) For declaratory relief that Wells Fargo conduct violated the Washington Consumer Protection Act;

2) For judgment that Wells Fargo committed the torts of Negligence, Negligence Misrepresentation, Conversion and Outrage;

3) For judgment that Wells Fargo breached the loan documents and the bankruptcy court's order confirming the Chapter 13 Plan;

4) For all resulting damages from Wells Fargo breach of contract and violation of statutes and tort laws; including attorney fees and costs under the Deed of Trust;

5) Damages including emotional distress, for the conduct alleged in an amount to be fully proven at the time of trial;

6) For all remedies provided under the WA CPA, RCW 19.86.090, including treble damages up to \$25,000 for each and every violation of the Consumer Protection Act, and attorney fees and costs under RCW 19.86.090;

7) Plaintiff reserves his request for injunctive relief pursuant to RCW 19.86.090.

8) For actual damages, attorney's fees and costs, punitive damages in the amount of \$10,000 and any other equitable relief the court may deem necessary for violations of the ECOA under 15 U.S.C. § 1691e(a) –(d);



- 9) For pre-judgment interest on the above amounts as authorized by law;
- 10) For other relief as the Court deems just and equitable;
- 11) For leave to amend this complaint as needed and as required; and

Respectfully submitted this 2nd day of April 2021.

BARRAZA LAW, PLLC

/s/ V. Omar Barraza

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